SINGLE BENCH

~~CF 602~~

CF 60 L

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 62 / 2007

Appellant (Plaintiff) : Bisauni Bai, W/o Shyamlal, Caste – Sahu, Aged about 56 years, Occupation – Agriculturist, R/o Pallari, Patwari Halka No.21/3, Tahsil Gurur, Distt. Durg (C.G.)

P.R. No. 428/07 Durg
6/12/07

VERSUS

Respondents (Defendants) :

1. Kejabai, W/o Late Halal Khor, Aged about 80 years, R/o Pallari, Tahsil Gurur, Distt. Durg (C.G.)
2. State of Chhattisgarh – Through the Collector, Durg (C.G.)

CERTIFIED COPY 6/12/07 BILASPUR

SECOND APPEAL U/S 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....S.A. No. 62/ सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13/02/2007

Shri P. Diwakar, Senior Advocate with Shri Adil Minhaj, counsel for the appellant.

Shri N.P. Koshta, counsel for respondent No. 2/Caveator.

Shri Akhil Agrawal, Panel Lawyer for the State/respondent No. 2.

Heard on admission.

Appellant/plaintiff is aggrieved by the judgment and decree dated 22.1.2007 passed by Additional District Judge, Balod, District Durg in Civil Appeal No. 11-A/2005 affirming the judgment and decree on 30.7.2005 passed by 1st Civil Judge, Class-II, Balod, District-Durg in Civil Suit No. 97-A/2004 where by the suit for declaration of title over the suit lands and permanent injunction was dismissed.

Brief facts as pleaded by the plaintiff are that she is the daughter of Halalkhor and Gendi Bai. Gendi Bai died in 1957. Thereafter, Kejabai, defendant No. 1 started living with Halalkhor as his mistress. After death of Halalkhor in 1964, Kejabai got the suit lands mutated in her name in collusion with Patwari and revenue officer. On these pleadings, the plaintiff prayed for declaration of title over the suit land and for permanent injunction to restrain the defendant from causing disturbance in her possession over the suit land. Keja Bai resisted the suit on the ground that she is the married wife of Halalkhor.

Both the Courts below have on proper appreciation of evidence, recorded a finding of fact that Keja Bai is the married wife of

P.T.O.

Contd..2

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 62 ..... **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

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Halalkhor and on this ground disentitling the plaintiff to the relief claimed in the suit.

In **Navaneethammal Vs. Arjuna Chetti** reported in **(1996) 6 Supreme Court Cases** 166, it was held by the Apex Court as under:

> "Interference with the concurrent findings of the Courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower Courts. In the present case, the lower appellate Court fairly appreciated the evidence and confirmed the conclusion of the trial Court that suit was not barred by limitation. Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate Court was based on no material."

In this view of the matter, the finding recorded by both the Courts below being a finding of fact and based on proper appreciation of the material and evidence on record, I am of the considered opinion that no substantial question of law is involved in this Second Appeal which is liable to be dismissed at the stage of admission.

In the result, this Second Appeal is dismissed at the stage of admission.

Accordingly, M.(C).P. No. 269/2007 under Order 39 Rule 1 and 2 also stands dismissed.

No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr

P.T.O.